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Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 62/145 and Commission on Human Rights resolution 2005/2, the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination.

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Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Summary

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination was established in July 2005 pursuant to Commission on Human Rights resolution 2005/2. It is mandated, inter alia, to monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world and to study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights.

From March 2007 to April 2008 Mr. José L. Gómez del Prado (Spain) was the Chairperson-Rapporteur of the Working Group. From April 2008, the Working Group was headed by its Chairperson-Rapporteur, Mr. Alexander Nikitin (Russian Federation), and its members were Ms. Najat Al-Hajjaji (Libyan Arab Jamahiriya), Ms. Amada Benavides de Pérez (Colombia) and Ms. Shaista Shameem (Fiji).

The present report is prepared in accordance with the terms of Commission on Human Rights resolution 2005/2, in which the Commission on Human Rights requested the Working Group to report annually to the General Assembly, and with the terms of General Assembly resolution 62/145.

Section I of the report introduces its contents, section II outlines the activities undertaken by the Working Group, including its third session, held in April 2008, and summarizes the conclusions of the field mission it conducted in the United Kingdom of Great Britain and Northern Ireland. It refers to actions taken under the Working Group communications procedures and notes consultations held with representatives of Governments, intergovernmental and non-governmental organizations and academia.

Section III contains an overview of relevant international developments regarding the issue of mercenaries, mercenary-related activities and the activities of private military and security companies.

Section IV depicts the draft principles, guidelines and criteria elaborated by the Working Group in view of the possible development of national and international regulation mechanisms to address the activities of private military and security companies. This is the first step in presenting concrete proposals on possible complementary and new standards aimed at filling existing gaps, as well as general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self-determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities and private military and security companies, as mandated by the Human Rights Council.

Section V addresses the Working Group's future activities, and section VI contains its conclusions and recommendations.

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I. Introduction

1. The Commission on Human Rights, by its resolution 2005/2, decided to establish a Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, made up of five independent experts, for an initial period of three years. From March 2007 to April 2008, Mr. José L. Gómez del Prado (Spain) was the Chairperson-Rapporteur of the Working Group. At its third session, in April 2008, the Working Group, in accordance with its methods of work, elected Mr. Alexander Nikitin (Russian Federation) as its Chairperson-Rapporteur. Ms. Najat Al-Hajjaji (Libyan Arab Jamahiriya), Ms. Amada Benavides de Pérez (Colombia) and Ms. Shaista Shameem (Fiji) are the other members of the Group.

2. At its seventh session, the Human Rights Council, by its resolution 7/21, renewed the mandate of the Working Group for a period of three years and extended it to: elaborate and present concrete proposals on possible complementary and new standards aimed at filling the gaps, general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self-determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities.

3. Pursuant to its mandate, the Working Group has continued, inter alia, to monitor mercenaries and mercenary-related activities in all their forms and manifestations, as well as to study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights. During the period under review, the Working Group held its third session (Geneva, 7-11 April 2008), undertook a field visit to the United Kingdom of Great Britain and Northern Ireland and convened a regional consultation for Latin America and the Caribbean on the "Effects of the activities of private military security companies on the enjoyment of human rights: regulation and oversight".

4. For the purposes of the report, while recognizing the definitional challenges, in referring to private military and private security companies the Working Group includes private companies that perform all types of security assistance, training, provision and consulting services, including unarmed logistical support, armed security guards, and those involved in defensive or offensive military and/or security-type activities, particularly in armed conflict areas and/or zones.

5. Accordingly, pursuant to General Assembly resolution 62/145, the Working Group submits its third report to the General Assembly, for consideration at its sixty-third session.

II. Activities of the Working Group

A. Third session of the Working Group

6. At its third session, held in Geneva from 7 to 11 April 2008, the Working Group elected Mr. Alexander Nikitin (Russian Federation) as its Chairperson-Rapporteur for the coming year and convened consultations with representatives of Member States, United Nations agencies and organs, the Office of the United

Nations High Commissioner for Human Rights (OHCHR), the International Committee of the Red Cross (ICRC), academics, non-governmental organizations and an association of private military and security companies.

7. After having considered a number of country situations, the Working Group decided to send letters of request, or to renew its requests, to visit Armenia, Azerbaijan, Colombia, Equatorial Guinea and the United States of America. By letter dated 24 June 2008, the Government of the United States accepted the request of the Working group to visit that country. The Working Group also decided that, in compliance with Human Rights Council resolution 7/21, the next regional consultation would be held for countries of Eastern Europe Group and Central Asia region. Finally the Working Group also decided on the procedure for drafting guidelines for regulations of private security and military companies.

B. Field missions

1. Mission to the United Kingdom of Great Britain and Northern Ireland

8. A delegation of the Working Group, composed of its Chairperson-Rapporteur and one member, visited the United Kingdom from 26 to 30 May 2008.

9. The comprehensive report of the mission, including its conclusions and recommendations, will be presented to a forthcoming session of the Human Rights Council. An overview of its preliminary observations upon the completion of the visit are presented below.

10. During its visit, the Working Group collected information useful for the fulfilment of its mandate, which is, in part, to monitor and study the effects on the enjoyment of human rights of the activities of private companies offering military assistance, consultancy and security services on the international market and to prepare a draft of international basic principles that encourage respect for human rights by those companies in their activities.

11. The Working Group considered information on the system of regulation of activities of private military and security companies registered in the United Kingdom. In the process of doing so, it met with representatives from Governmental agencies, civil society and representatives of private military security companies, as well as the British Association of Private Security Companies.

12. The Working Group is recommending that the Government of the United Kingdom undertake a new comprehensive inquiry into the status and regulation of private military and security companies in Britain, make a policy choice between six options for regulation elaborated in the 2005 Green Paper and take an active stand in the elaboration of the international regulatory instruments for private military and security companies.

2. Other missions in preparation

13. The Working Group will consider visiting Afghanistan at the end of 2008 and the United States of America at the beginning of 2009. Comprehensive reports, including conclusions and recommendations, on these missions will be presented to a forthcoming session of the Human Rights Council.

C. Regional consultation

14. The Working Group convened a first regional consultation for Latin America and Caribbean countries on 17 and 18 December 2007, in Panama City.

15. The objectives of the consultation were to gather a regional perspective about the current recruiting practices of private military and security companies of personnel to be deployed in armed conflict or post-conflict situations and to share information on steps taken by States in the region to introduce legislation and/or other measures to regulate and monitor the activities of such companies on the international market.

16. The Working Group discussed general guidelines, norms and basic principles for the regulation and oversight of the activities of private companies offering military assistance, consultancy and security services on the international market with representatives of the Governments of the region, with a view to encouraging the further protection of human rights.

17. Representatives from the Governments of Chile, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Honduras, Panama and Paraguay participated in the consultation. In addition, representatives of the Inter-American Institute of Human Rights, four academic experts and representatives of two associations of private military and security companies, the International Peace Operation Association and the British Association of Private Security Companies also participated in the debates.

18. The Working Group collected factual data on the activities of private military and security companies in countries of the region and engaged in discussions on the regulation and status of such companies at the international level with the Government representatives.

D. Communications

19. The Working Group has received information from Governments, non-governmental organizations and individuals concerning situations involving mercenaries, mercenary-related activities and private military and security companies. During the year under review, communications have been sent to Australia, Colombia, Iraq, Israel,[1] Mexico and the United States. The communications and summaries of responses received from Governments will be reflected in the forthcoming report of the Working Group to the Human Rights Council.

E. Other activities

20. On 12 September 2007, the former Chairperson-Rapporteur participated in a round table on the legal implications of the human rights to peace during the sixth session of the Human Rights Council. The round table was organized by the Spanish Society for the Advancement of the International Human Rights Law.

[1] A copy of the letter was also sent to the Palestinian Authority.

21. From 31 January to 1 February 2008, the former Chairperson-Rapporteur and a member of the Working Group participated in an international conference on the "Privatization of Security and Human Rights in the Americas: Perspectives from the Global South" at the University of Madison, Wisconsin. The conference was organized by the University of Madison and established an international research network on private military and security companies.

22. On 5 and 6 June 2008, José Luis Gómez del Prado participated in a conference on the "Social Construction of Threat and the Changing Relation between Liberty and Security" at the Centre for European Policy Studies, in Brussels.

23. In January 2007, a member of the Working Group established an Academic Network, composed of academics and representatives of non-governmental organizations, to investigate the phenomenon of mercenarism and private military and security companies in Bogotá.

24. In the course of the past year, the Chairperson and members of the Working Group have given numerous interviews and provided information to the mass media on the export of military and security activities by transnational companies, the privatization of warfare and security and the implication in human rights of such activities.

25. In addition, since June 2008, José Luis Gómez del Prado has been a member of the Geneva Centre for the Democratic Center of Armed Forces Advisory Group on "Private Security Regulation.Net", an Internet-based resource for the regulation of private military and security companies.

III. International and regional developments

26. During the period under review transnational private military and security companies, mainly from the United States and the United Kingdom, but also from Australia, Canada, Israel and other countries, continued to export their services to over 50 countries, in particular to countries where low intensity armed conflicts are ongoing, including Afghanistan, Iraq, the Democratic Republic of the Congo, Somalia and the Sudan. The industry is estimated to earn between $100 and $120 billion annually.

27. In Iraq there are more than 180 private military and security companies providing services to the multinational forces employing 48,000 private security guards.[2] In Afghanistan it is estimated that there are some 60 such companies with between 18,000 and 28,000 employees, 8,000 of them foreigners. Of that number, 6,000 are employed by the two largest American companies, Blackwater and DynCorp, but some are also employed by Aegis, ArmorGroup, Global and Kroll.[3] The outsourcing of military and security functions, formerly performed by States, has become multidimensional. Such personnel are employed in: recruiting and management of police personnel for international missions; patrolling oil fields and oil-pipelines; protection of Iraqi energy systems; guarding embassies; controlling

[2] United States Government Accountability Office, *Rebuilding Iraq — Actions Still Needed to Improve the Use of Private Security Providers*, statement of William Solis, Director, Defense Capabilities and Management, June 2006.

[3] Swisspeace, "Private Security Companies and Local Populations, Berne, 2007. See also, *The Times*, 11 and 12 February 2008.

prisons in Iraq and Afghanistan; de-mining and destruction of explosives; and numerous other functions.

28. The civilian population is often the victim of the activities of private military and security companies, which put their employees in direct contact with the public, as shown by the tragic events of 16 September 2007 in Nisour Square in Baghdad, in which employees of Blackwater allegedly opened fire and killed 17 and injured more than 20 civilians, including children and women. Under order 17, issued by the Administrator of the Coalition Provisional Authority on 27 June 2004, foreign private contractors are immune from prosecution. However, the Iraqi Ministry of Justice recently stated that families of the civilians allegedly killed by employees of Blackwater in the incident of 16 September 2007 have brought legal cases before the Iraqi tribunals.[4]

29. Unfortunately, the case of Blackwater is not an exception. Other private military and security companies have been reported to be involved in such incidents, in particular: the killing of two Iraqi women and the injuring of three civilians in Kirkuk involving Erinys International; the killing of an Iraqi taxi driver who allegedly was shot three times by employees of DynCorp International, hired to protect American diplomats; the killing by a Blackwater employee of three Iraqi guards working for the Iraqi media network;[5] and the involvement of employees of the Unity Resources Group protecting a convoy, in central Baghdad, in shooting of Iraqis, which left two Iraqi women dead (reports on this incident indicate that approximately 30 to 40 shots were fired).

30. These sorts of incidents involving private military and security companies have been prevalent in the reconstruction of Iraq since its occupation in 2003. Other such companies, for example Triple Canopy[6] and Aegis,[7] have also been involved in similar incidents.

31. It is estimated that 15 to 34 per cent of reconstruction aid to countries such as Iraq and Afghanistan is spent on security services provided by private military and security companies. According to a recent report by Integrity Watch Afghanistan, Afghans receive only an average $20 out every $100 spent on reconstruction and aid. In November 2007, some nine unlicensed private military and security companies were shut down in Afghanistan and a statement issued by the Office of the President indicated that all private security firms operating in Afghanistan had to close down. The President's spokesman stated that under the Constitution only the forces of the Afghan Government had the right to possess and handle weapons.[8]

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[4] *Publico*, "El ministro de Justicia de Irak, Safa al Safi", Madrid, 20 July 2008.

[5] War on Want, "Getting Away with Murder: The need for action on UK PMSC", briefing, December 2007 (www.waronwant.org).

[6] "Four Hired Guns in an Armored Truck, Bullets Flying, and a Pickup and a Taxi Brought to a Halt. Who Did the Shooting and Why? A Chaotic Day On Baghdad's Airport Road", Steve Fainaru, *Washington Post Foreign Service*, 15 April 2007.

[7] A video published on the Internet showed mercenaries from Aegis Defence Services randomly shooting at civilian cars from the back of their vehicle on the road to Baghdad airport. A statement issued by Aegis said that the investigations carried out by the United States Army and by an independent panel of inquiry organized by Aegis indicated "that all of the circumstances, when seen in context, were within the approved and accepted rules for the use of force, that no crime had been committed,".

[8] *Agence France Press*, 22 November 2007.

32. During the period under review, private military and security companies continued to contract third country nationals from all regions of the world in order to cut costs and increase profits. For example, an estimated 1,500 Ugandans worked for the Special Operations Consulting-Security Management Group. In October 2007, the Namibian authorities ordered two employees of the same company to leave the country for trying to recruit Namibians to work as "private security guards" in Iraq and Afghanistan. The company was shut down on the grounds that it violated Namibian laws.[9] The Working Group reiterates its concern regarding the rise in the contracting and use of Latin American nationals to work in conflict zones, as noted in previous documents.[10] It is also concerned that, despite its work in monitoring the phenomenon and the attempt to alert States to the challenge, the problem continues to grow. According to estimates by the Working Group the number of Latin Americans working as security guards in Iraq is over 3,000.

33. In his press statement the Special Rapporteur on extrajudicial, summary or arbitrary executions after having visited the United States in June 2008, Professor P. Alston identified the issue of ensuring accountability for killings by private security contractors and civilian Government employees in Afghanistan and Iraq. He referred to the "existence of a zone of de facto impunity for killings by private contractors operating in Iraq and elsewhere" which had been tolerated for too long. He added that the United States Department of Justice, which is responsible for prosecuting private security contractors, civilian Government employees and United States soldiers for violations of a range of federal statutes, had failed and the legislative initiatives taken by Congress to deal with such human rights violations as the abuses committed at Abu Ghraib and the killings at Nisour Square had been largely in reaction to specific incidents. In October 2007, an oversight panel of the United States House of Representatives released a report indicating that Blackwater employees had been involved in at least 196 fire-fights in Iraq since 2005, an average of 1.4 shootings per week. In 84 per cent of those cases, the reports stated, Blackwater employees opened fire first, despite contract stipulations to make use of force only in self-defence.[11]

34. Amnesty International[12] has indicated that of the 20 known cases of civilians suspected of criminal acts there has been only one indictment of a contractor on assault charges in connection with the death of a detainee in Afghanistan. There has not, however, been a single prosecution of a private military contractor in Iraq.

35. In his report to the Security Council, the Secretary-General underscored the danger of the activities conducted by private military and security companies in situations that include the protection of personnel and assets, interrogation of prisoners and even participation in combat operations. The report underlined the obligation of the employees of private military and security companies to comply

[9] *Reuters*, 13 October 2007. Special Operations Consulting-Security Management Group is a United States-based private military company employing 300 former United States soldiers in Iraq. They provide services in force protection, personal security, convoy security operations, consulting and threat assessment and training.

[10] See A/HRC/4/42 and Add.1 and 2, A/61/341, E/CN.4/2006/11/Add.1, and E/CN.4/2006/11.

[11] Bryan Bender, "United States control over guards in Iraq urged, Blackwater criticized", *Globe Staff*, 3 October 2007.

[12] Larry Cox, Executive Director, Amnesty International USA, 2006 Amnesty International report.

with international human rights and humanitarian law as well as the responsibility of the States hiring them.[13]

36. Since its first session, the Working Group has defined the study of possible effects of Government accords that confer immunity to private military and security companies and their employees as a priority. In many cases the contractors and the companies act in a context free of control by or subordination to country authorities, which implies a number of risks. The impunity conferred on the private military security companies has created a form of judicial uncertainty that has permitted the evasion of responsibilities on the part of their employees regarding the commission of illicit actions or human rights violations.

37. The Working Group has also recognized an emerging phenomenon in Latin America regarding the use of private security companies increasingly involved in the protection of geo-strategic sites such as mines, oil extraction sites, forests and water sources through the repression of social protest. In such situations, the legitimate social protest by peoples in defence of their land and their environmental rights is confused with criminal or terrorist actions and those protesting in defence of their human rights are prosecuted, charged, intimidated or killed. The Centro de Estudios en Seguridad Pública in Mexico stated that, with the reform of the petroleum sector, some risk exists that foreign private petroleum companies may come to the country with their own private security companies.[14] Another particularly worrying pattern in exporting private military and security services by transnational companies has been the contracting by the Mayor of the city of León, Mexico, of the company Risks Incorporated, established in Miami, United States, allegedly to train the local police in torture techniques.[15] Such companies have also been involved with federal and municipal policemen in human rights violations in Mexico.

38. Even though the presence of "classical" mercenaries in national conflicts seems to be quite rare today, Latin America presents examples that demonstrate their presence. One case is that of Yair Klein, captured in August 2007 in Moscow by INTERPOL with a mandate for extradition released by the Government of Colombia on 28 March 2007. Klein was condemned to a sentence of 10 years and eight months imposed by the Superior Tribunal of Manizales in 2001 where he was charged and tried for providing instruction and training in military and terrorist tactics, techniques and procedures, including conspiracy, with an aggravated charge for having done so with mercenaries. Klein has also been charged and fined $13,400 by an Israeli tribunal for arms sales to illegal Colombian groups and was previously detained for 16 months in Sierra Leone for the sale of arms to a rebel group.

39. The Working Group would like to report some advances in relation to the internal voluntary principles established by some nations for the control of private military and security companies. For example in the Dominican Republic, police and private security companies signed a cooperation agreement in April 2008. While these measures represent an advance, they are voluntary in character and do not have compulsory or obligatory legislation, which reduces the capacity of the State to exercise sanctions in case of non-fulfilment.

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[13] S/2007/643.

[14] See http://www.jornada.unam.mx/2008/07/22/index.php?section=politica&article=005n2pol.

[15] Jorge Carrasco Araizaga, "Mercenarios en Mexico", 18 July 2008. Risks Incorporated is a London-based, owned and managed bodyguard school and executive protection company.

40. It should be mentioned that a number of private military and security companies figure in the United Nations Procurement Service-List of Registered Vendors. In that connection, the Working Group has recommended that United Nations departments, offices, organizations, programmes and funds establish an effective selection and vetting system and guidelines containing relevant criteria aimed at regulating and monitoring the activities of private security/military companies working under their authority. They should also ensure that the guidelines comply with human rights standards and international humanitarian law.

IV. Elaborated principles, guidelines and criteria for national and international regulation mechanisms

41. Based on its country visits and consultations with various stakeholders, the Working Group has started to establish a framework of principles and criteria for the elaboration of national and international regulation mechanisms to address the activities of private military security companies. This is still a work in progress based on the observations of the Working Group, which intends to continue its consultations with Governments, international and regional organizations, civil society and the private military and security industry to come up with concrete proposals on possible complementary and new standards aimed at filling the gaps, general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self-determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities.[16]

A. Legal standards

42. The main initial step to regulate activities of private military and security companies and their employees would be to establish legal standards defining a juridical framework for the activities of these companies.

43. It has proven difficult to legally qualify activities performed by private military and security companies and their employees. As previously stated by the Working Group, most of these companies are operating in a "grey zone" not defined or not clearly defined by international legal norms.[17]

44. The relation between private military and security companies and mercenary service is not direct. Performing various activities under Governmental contracts and sometimes under international intergovernmental agreements, even in conflict zones, does not fall, in most cases, under the "traditional" legal definition of a mercenary.

45. In its resolutions on the subject, the General Assembly points to "gaps" in existing legal norms, which need to be filled in order to regulate private military and security companies and assure their respect of human rights. To identify these gaps, it is important to recognize that the International Convention against the Recruitment, Use, Financing and Training of Mercenaries remains the only universal instrument dedicated in addressing this matter. In its definition of mercenarism, the

[16] Human Rights Council resolution 7/21, para. 2 (a).
[17] A/HRC/7/7, para. 25.

Convention takes into consideration not only situations of armed conflict but also of violence organized to bring about the collapse of a Government, to undermine constitutionality or to act against the territorial integrity of a State. The Convention criminalizes the recruitment, financing, training and use of mercenaries.

46. International humanitarian law contains only one provision specifically addressing the issue of mercenaries, namely article 47 of the first additional protocol of 1977 to the Geneva Conventions of 1949. Ratified by a large majority of States, article 47 does not forbid mercenary service. It states that mercenaries are denied the privileged status of a combatant or a prisoner of war and that they can therefore be held responsible by the opposing State for having taken part in an international armed conflict. A State is not obliged, however, to deny prisoner of war status. In addition, paragraph 2 of article 47 contains a definition of mercenary, with six conditions. Only a small portion of the employees of private military and security companies involved in military functions could be qualified as mercenaries.

47. In 1970, the General Assembly, by its resolution 2625 (XXV) adopted the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. The first principle of the declaration deals with the ban on the use of force and falls under international customary law. The declaration makes it a duty of the State not to use "mercenaries, irregular forces or armed bands" against the territorial integrity or independence of another State. The declaration does not, however, define what is meant by irregular forces or armed bands.

48. At the regional level, in 1977 the African Union (formerly the Organization of African Unity) drafted the Convention for the Elimination of Mercenarism in Africa. In that convention, the definition of the term "mercenary" is similar to the one used in article 47 of the Geneva Convention.

49. In 2005, the Parliamentary Assembly of the Council of Europe issued recommendation No. 1713 on democratic oversight of the security sector in member States. The last provision of the recommendation which relates to private companies dealing with intelligence and security affairs, states that they should be regulated by law and that specific oversight systems should be put in place, preferably at the European level. According to the document, such regulations should include provisions on parliamentary oversight, monitoring mechanisms, licensing provisions and means to establish minimal requirements for the functioning of those private companies.

50. Also in 2005, 12 States members of the Commonwealth of Independent States adopted a model law on counteracting mercenarism, in which more modern multidimensional definitions of mercenary activities were agreed upon. The model law postulates a possibility of mercenarism based on motivation of non-material gains (including ideological and religious motivations), and makes various claims as to the rights of the States to prevent, if required, the operation of foreign mercenaries and recruiting organizations (companies) on their territories, and to punish parties for spreading propaganda about mercenary-related activities or the financing of such activities. The law partially bridges the gap between regulation of mercenaries and the regulation of private military and security companies.

51. At the national level, countries that have already passed laws on mercenarism include: Belgium, Italy, South Africa, New Zealand, France and Zimbabwe.

B. Registration

52. The Working Group believes that the setting of an open international register for private military and security companies would constitute an important step in regulating their activities. The register, which could be based on the experience of other registers established at the international level, would require the adjustment of national regulations regarding the registration of military and security companies.

53. In 1991, the General Assembly adopted resolution 46/36 L, by which it requested the Secretary-General to establish and maintain a universal and non-discriminatory Register of Conventional Arms, including data on international arms transfers and information provided by Member States on military holdings, procurement through national production and relevant policies.[18]

54. The Register comprises seven categories of major conventional arms. It has been in operation since 1992. Thus far, a total of 172 States have reported to the Register one or more times. The Register captures the great bulk of the global arms trade in the categories of conventional weapons covered by it.

55. An international registry of international arms transfers will be put in place in the next few years. In a draft framework convention on international arms transfers of 25 May 2004,[19] it was stated that an international registry of international arms transfers would be established. The draft convention also provides that contracting parties would submit to the international registry an annual report on arms transfers from or through their territory or subject to their authorization and that the international registry would publish annual and other periodic reports, as appropriate, on international arms transfers.

56. Export of military and security services should be placed under the category similar or comparable to export of arms or military equipment, and Governments should be required to provide regular reports to the United Nations both for outgoing and incoming military and security services.

C. Licensing

57. Licensing procedures and practices are the mechanisms by which individual export licence decisions are made. Export licensing procedures[20] are "transaction-based": a specific licence is issued to authorize each export transaction.

58. The draft framework convention on international arms transfers[21] states, in article 5, that contracting Parties should establish authorization and licensing mechanisms under their national laws, as necessary, in order to ensure that the requirements of the convention may be effectively applied. At a minimum, it was planned that each application for authorization would be reviewed and licensed individually. The licensing procedure is already part of the arms control mechanism of most States and is also being incorporated into regional arms control arrangements. The Working Group believes that national Governments should

[18] See http://disarmanent.un.org/cab/register.html.

[19] See http://www.iansa.org/documents/2004/att_0504.pdf.

[20] See http://www.heritage.org/research/regulation/wm_1798.cfm.

[21] See http://www.iansa.org/documents/2004/att_0504.pdf.

implement licensing mechanisms for the export of military and security services and that the licences should be given on a contract basis.

59. The Council of the European Union has passed a resolution introducing a European Code of Conduct, which is intended to prevent the flow of arms from countries members of the Union to unstable regions of the world where gross human rights violations may take place. The code also includes a list of sensitive destinations and provides a system of verifying and monitoring the use of arms. In addition, the code puts in place a system of sharing of information and consultation on the granting and denial of export licences at the national level.

60. The European Code of Conduct is not legally binding for the States parties to it, and there is no mechanism to hold them accountable for failing to respect it. However, the code defines eight criteria that member States must address in case of arms export, inter alia: respect for the international commitments of the member States of the Union, in particular the sanctions decreed by the United Nations Security Council and the respect of human rights in the country of final destination.

61. In North and South America, 19 members of the Organization of American States have signed an agreement on conventional arms transfers, the Inter-American Convention on Transparency in Conventional Weapons Acquisitions, which requires signatories to disclose information on major arms exports and imports annually.[22] It does not, however, put in place a registration or licensing system, either for arms or for military and security services.

D. Accountability mechanisms

62. In order for any regulation mechanisms to be implemented for private military and security companies, accountability mechanisms should be put in place to ensure that it is enforceable.

63. The formulation of minimum required transparency criteria for such companies may require private military and security companies to submit data annually on the main parameters of their structure, contracts and operations.

64. In some States,[23] domestic criminal jurisdictions sought to close jurisdictional gaps for civilians accompanying the armed forces or employed by them in areas where the armed forces are engaged in military operations.

65. However, apart from the formal judicial mechanisms, other mechanisms can be put in place to ensure accountability of individuals and companies providing security or military services.

E. Vetting legal and human rights training

66. The usual vetting mechanisms[24] that apply to the institutions of post-conflict States, usually public institutions, can be transferred to the private military and security companies.

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[22] See http://www.oas.org.

[23] In the United States, the War Crimes Act (1996, amended 1997) and the Military Extraterritorial Jurisdictional Act (2000).

67. The first step of vetting, which consists in creating a commission to lead the transitional personnel reform, could be applied to private military and security companies during the hiring process.

68. In such a review, a special transitional mechanism is usually established to screen serving employees and determine their suitability for continued service. The objective is to remove those who are unfit to hold office. A review process should be individualized. Employees subject to a review should be granted a fair hearing. In general, the burden of proof falls on the reviewing body to establish that a public employee is not suitable to hold office.

69. A personnel reform process consisting of three phases: registration, screening and certification could also be applied to the private security industry.

70. The registration of the public employees to be vetted is necessary if the personnel records of an institution are not properly maintained and if the number and the status of public employees are uncertain. The basic objective of registration is to determine and close the pool of those individuals who belong to an institution and are, therefore, to be included in the personnel reform. Registration forms include basic information on an employee and her or his professional record.

71. Once the employees to be included in the reform process have been determined, they are screened to assess if they meet the criteria for continued employment. Employment criteria are post-specific and are determined in accordance with the level of the post in the organizational structure of an institution. Information on individual employees is systematically collected and stored in the personnel registry. Data from the integrity databank need to be integrated in order to include relevant background information in the personnel registry. The screening consists of applying employment criteria to data on individual employees. Additional checks and independent investigations may be necessary to complete missing information or to verify doubtful information.

72. Employees who meet the employment criteria are certified. Certification constitutes the final decision on the status of a public employee in the transition. The personnel reform is completed once the certification status of all employees has been determined. Certification could also require completion of a probationary period of service. During the probationary period, employees and new recruits could be removed more easily if additional information emerged about past misconduct.

73. During the period under review different stakeholders have stressed that the one indispensable element in any regulation mechanism is mandatory human rights and legal training of the employees of private military and security companies.

74. Thus far, some companies have initiated such training, although no institutionalized course is being integrated into the induction training provided to employees.

[24] OHCHR, *Rule-of-Law Tools for Post-Conflict States, Vetting: an operational framework*, New York and Geneva, 2006.

F. Oversight

75. Parliamentary oversight of private military and security companies could involve regular parliamentary hearings, inquiries and investigations, including the creation of a specific committee, subcommittee or commission within the parliamentary structures of countries exporting security and military services aimed at scrutinizing the delivery of licences according to a code of conduct. This committee could have powers to grant or refuse the issuing of such a licence in case of military-related activities in a country where human rights abuses are common.

V. Future activities

76. In the coming year the Working Group will pursue consultations with Member States to promote the widest possible ratification/accession to the 1989 International Convention.

77. With a view to negotiating and arranging future country visits, the Working Group will continue its consultations with the delegations of Armenia, Azerbaijan, the Central African Republic, Chad, Colombia, Equatorial Guinea, Ghana, Iraq, Papua New Guinea, South Africa and Zimbabwe.

78. Moreover, pursuant to Human Rights Council resolution 7/21, in October 2008 the Working Group will convene a regional consultation for countries from Eastern Europe and Central Asia on the "Effects of Activities of Private Military Security Companies on the Enjoyment of Human Rights: Regulation and Oversight". It has been recommended that the Working Group convene five regional consultations, followed by a high-level round table, under United Nations auspices, in conformity with a request to OHCHR in General Assembly resolution 62/145. This process may lead to the holding of a high-level round table of States to discuss the fundamental question of the role of the State as holder of the monopoly of the use of force, with the objective of facilitating a critical understanding of the responsibilities of the different actors, including private military and security companies, in the current context, and their respective obligations for the protection and promotion of human rights and in reaching a common understanding as to which additional regulations and controls are needed at the international level.

VI. Conclusions and recommendations

79. **Despite the current international changes, the use of mercenaries in both traditional and non-traditional formats remains a serious problem in the world today. There has been widespread and direct use of mercenaries and mercenary-related activities in many conflict areas in Europe, Asia and the Pacific, Africa and the Americas during the period under review.**

80. **The United Nations Convention against the Recruitment, Use, Financing and Training of Mercenaries, which has been ratified and/or signed by 40 nations, remains an important international legal instrument for the prevention of the use of mercenaries as a means of violating human rights and the rights of people to self-determination.**

81. **The Working Group strongly recommends that countries that have signed but have not yet ratified the Convention[25] proceed as soon as possible with the finalization of necessary procedures for the ratification of this important international instrument. Some countries which are parties to the Convention but have not yet introduced any national legislation on regulating mercenarism,[26] should proceed with the elaboration and adoption of national laws in this regard. Noting with satisfaction that during the reporting period the process of full accession to the Convention continued,[27] the Working Group appeals to countries that are yet not parties to the Convention to consider accession to it.**

82. **The Working Group conducted further study of existing international, regional and national legislation on mercenaries and noted that some modernization of legal instruments in the field have taken place. This modernization was embodied in recent years by the adoption of new national legislation on the use of mercenaries (France, South Africa) and some new regional instruments (for example, Commonwealth of Independent States model law of the Commonwealth of Independent States on counteracting mercenarism, the elaboration of proposals for amendments to the Convention on Mercenaries of the African Union).**

83. **The practice of using private military and security companies constitutes a relatively new area of the mandate of the Working Group. The Group undertook intensive study of the current situation with regard to the activities and regulation (or lack of regulation) of these companies. The study revealed wide discrepancies among the companies, their contracting practices, level of professionalism, standards of training and ability to assure respect for human rights. Actual cases were studied (some covered in the present report), in which private military and security companies or their employees were clearly violating human rights norms and principles. The Working Group has concluded that urgent actions are required at the level of the international community to elaborate and promote a comprehensive regulatory system for these companies.**

84. **The Working Group recommends that separating the criminalization of prohibited "traditional" mercenary activities (for example, the participation of foreign recruited armed personnel in the overthrow of legitimate State authorities) from the general context of the activities of the private military and security companies could be done on the basis of existing legislation on mercenaries, if the party involved is a signatory to the United Nations Convention or has passed a specific national law on mercenaries. However, the Working Group has concluded that the general activities of these companies cannot be regulated only on the basis of the United Nations Convention even after an exercise of modernization and amendment has taken place. A new international legal instrument, possibly in the format of a new United Nations**

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[25] Angola, the Congo, the Democratic Republic of the Congo, Germany, Montenegro, Morocco, Nigeria, Poland, Romania and Serbia.

[26] Georgia, which reported the use of foreign mercenaries in the course of 2008 armed conflicts on its territory, is an example.

[27] In 2007 Cuba and Peru finalized ratification and accession procedures and became full members of the Convention.

convention on private military and security companies, may be required. Such a convention might be supplemented by another legal instrument, a model law on private military and security companies, which would assist national Governments in the elaboration and adoption of national legislation on their regulation.

85. **The Working Group also recommends that the approach of the international community to the private military and security companies needs to proceed from perceiving them as part of the regular "business as usual" exports under commercial regulations towards perceiving them as highly specific field of exports and services requiring supervision and constant oversight on behalf of the national Governments, civil society and international community, led by the United Nations. Both national Governments and the United Nations system must take greater responsibility for where and for what purpose such companies are operating worldwide.**

86. **The Working Group further recommends that an export of military and security services, including military consultancy and training of certain types within this area of services, should be placed under a category similar or comparable to export of arms or military equipment, and that Governments be required to provide regular reports to the United Nations on contracts in this field for both outgoing and incoming military and security services.**

87. **The Working Group suggest that best practices of export control and arms licensing, as well as the experience with the United Nations Register on Conventional Arms, could be taken into consideration while elaborating regulations for export of military and security services.**

88. **Most national Governments do not now possess systematized information on which military and security companies are registered on their territory and which companies originating from their country are registered abroad, sometimes in off-shore zones. It is recommendable that national Governments consider the creation of a separate register for military and security companies and prohibit, by national regulations, the registration of companies belonging to the field of military and security services in off-shore "minimal transparency" zones. The United Nations system might consider to extend the existing mechanism of the United Nations Register on Conventional Arms to cover the export/import of military and security services, or to include, at least, those involving the possession or use of lethal arms.**

89. **The Working Group believes that the licensing mechanism for export of military and security services is to be established by States under national law (with a "contract" rather than "company" as a unit for licensing). In addition, minimum required transparency criteria for private military and security companies should be formulated, a process which may require that such companies submit data annually on the main parameters of their actual current structure, contracts and operations.**

90. **In the elaboration of guidelines and principles for the regulation of private military and security companies and the prevention of the violation of human rights norms and standards by them, the Working Group intends to focus its work on the study and legal codification of the comprehensive system of oversight and regulation for private military and security companies, including**

legal and procedural means at international, regional and national levels, in order to assure:

(a) Respect of the private military and security companies as legal bodies and their employees as natural bodies for the universal norms of human rights and humanitarian law;

(b) Respect of the private military and security companies and their employees for national laws of countries of origin, transit and operation;

(c) Respect of the sovereignty of States, internationally recognized borders and rights of people for self-determination;

(d) Non-participation of private military and security companies and their employees in any activities aimed at: overthrowing legitimate Governments or authorities, violent change of internationally recognized borders or taking violent foreign control over natural resources;

(e) Guaranty of legitimate ways of acquiring, exporting, importing, possession and use of weapons by private military and security companies and their employees;

(f) Guaranty of adequate, mandated and proportional use of force;

(g) Restraint from the overuse of weapons, total prohibition of use of weapons of mass destruction, or weapons resulting in overkill, mass casualties or excessive destruction;

(h) Accountability of private military and security companies before the Governments of the country of origin (registration) and country of operations;

(i) Adequate public transparency over the activities of private military and security companies;

(j) Mechanism for the detailed registration of private military and security companies;

(k) Mechanism of licensing of the contracts of private military and security companies for operation abroad;

(l) Mechanisms of monitoring, inquiries, investigations, complaints and allegations regarding activities of private military and security companies;

(m) Mechanism of sanctions which may be applied nationally and/or internationally to private military and security companies in case of revealed violations;

(n) Standard mechanisms of contracting national and foreign personnel.

91. The Working Group expresses its thanks to all Member States, departments, programmes, bodies and agencies of the United Nations, including experts and non-governmental organizations, which assisted it in the fulfilment of its mandate.

Annex

Status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries

The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, was adopted by the General Assembly in its resolution 44/34 and entered into force on 20 October 2001. The status of the International Convention, as of 8 August 2008, is presented below.

State	*Signature, succession to signature (a)*	*Ratification, accession (b)*
Angola	28 December 1990	
Azerbaijan		4 December 1997[b]
Barbados		10 July 1992[b]
Belarus	13 December 1990	28 May 1997
Belgium		31 May 2002[b]
Cameroon	21 December 1990	26 January 1996
Congo	20 June 1990	
Costa Rica		20 September 2001[b]
Croatia		27 March 2000[b]
Cuba		9 February 2007[b]
Cyprus		8 July 1993[b]
Democratic Republic of the Congo	20 March 1990	
Georgia		8 June 1995[b]
Germany	20 December 1990	
Guinea		18 July 2003[b]
Italy	5 February 1990	21 August 1995
Liberia		16 September 2005[b]
Libyan Arab Jamahiriya		22 September 2000[b]
Maldives	17 July 1990	11 September 1991
Mali		12 April 2002[b]
Mauritania		9 February 1998[b]
Moldova		28 February 2006[b]

State	*Signature, succession to signature (a)*	*Ratification, accession (b)*
Montenegro	23 October 2006[a]	
Morocco	5 October 1990	
New Zealand		22 September 2004[b]
Nigeria	4 April 1990	
Peru		23 March 2007[b]
Poland	28 December 1990	
Qatar		26 March 1999[b]
Romania	17 December 1990	
Saudi Arabia		14 April 1997[b]
Senegal		9 June 1999[b]
Serbia	12 March 2001[a]	
Seychelles		12 March 1990[b]
Suriname	27 February 1990	10 August 1990
Togo		25 February 1991[b]
Turkmenistan		18 September 1996[b]
Ukraine	21 September 1990	13 September 1993
Uruguay	20 November 1990	14 July 1999
Uzbekistan		19 January 1998[b]